

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

AMARILLO DIVISION

LUTHER WAYNE COBB, PRO SE,	§	
also known as	§	
LUTHER WAYNE WARE,	§	
TDCJ-CID No. 1294301,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:09-CV-0034
	§	
Senior Warden TIMOTHY SIMMONS,	§	
Senior Warden JOE NUNN,	§	
Librarian II MARYANN LAMB,	§	
Correctional Officer MELONIA SIMMON,	§	
Assistant Warden GLEN H. WHITFIELD, and	§	
Asst. Prog. Admin. VICKY BARROW,	§	
	§	
Defendants.	§	

ORDER OF DISMISSAL

Plaintiff LUTHER WAYNE COBB, while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-referenced defendants and has been granted permission to proceed *in forma pauperis*.

On May 15, 2009, a Report and Recommendation was issued by the United States Magistrate Judge analyzing plaintiff's claims and recommending dismissal with prejudice as frivolous and without prejudice for failure to state a claim on which relief can be granted.

Plaintiff filed his Objections May 28, 2009, alleging additional facts in connection with his claims.

On June 8, 2009, a Supplemental Report and Recommendation was issued by the United States Magistrate Judge analyzing plaintiff's claims in light of his additional allegations and recommending that the civil rights claims filed by plaintiff and As amended or supplemented by plaintiff in his objections be dismissed with prejudice as frivolous and without prejudice for failure to state a claim on which relief can be granted.

Plaintiff filed his Objections on June 23, 2009. To the extent plaintiff attempts to incorporate his habeas claims into the instant civil rights suit by way of his latest set of objections, the Court notes plaintiff has pending a habeas action in which he is seeking habeas relief. Plaintiff must present these claims to the court handling his habeas action. Plaintiff has utterly failed to show he suffered any injury flowing from his access to courts claim. To the extent plaintiff thinks he is guaranteed a certain number of hours in the law library per week, he is wrong. He is guaranteed access to the courts, and, the prison system has at least two options for the manner in which that obligation is fulfilled. *Bounds v. Smith*, 430 U.S. 817, 828, 97 S.Ct. 1491, 1498, 52 L.Ed.2d 72 (1977). If plaintiff suffers no actual injury in a suit challenging his conviction, sentence, or the conditions of imprisonment, plaintiff has suffered no access to courts violation. *Lewis v. Casey*, 518 U.S. 343, 351-54, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996).

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation and Supplemental Report and Recommendation, as well as both set of Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation and Supplemental Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation and Supplemental Report and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that this Civil Rights Complaint is DISMISSED WITH PREJUDICE AS FRIVOLOUS AND WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

All pending motions are DENIED.

IT IS SO ORDERED.

SIGNED AND ENTERED this 9th day of July, 2009.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE